



Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775

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MODIFICATION # 1
DECISION and CERTIFICATE OF ACTION
Wildlife Woods
Definitive Subdivision Approval
Planned Conservation Development Special Permit
Water Resource Protection Special Permit

October 20, 2009

1. Application

This document is the DECISION of the Stow Planning Board (hereinafter, the Board) on its review and clarification to the Decision and Certificate of Action of the Wildlife Woods Definitive Subdivision, Planned Conservation Development Special Permit and Water Resource Protection Special Permit, dated March 6, 1998 (hereinafter the Original Decision).

2. Location

Said property is located on the southerly side of Sudbury Road between Kingland Road and North Shore Drive as shown on a plan of land entitled: Definitive Subdivision Plan, WILDLIFE WOODS, Stow, Massachusetts, Prepared for: Robert T. Dawes Trust, P.O. Box 472, Sudbury, MA 01776, prepared by Meisner Brem Corporation, dated May 15, 1997, revised through October 27, 1999.

3. Board Action

After due consideration of the record of the proceedings, and based upon the findings, conclusions and conditions set forth below, the Board, on September 22, 2009, by a unanimous vote of four (4) members present at the Public Hearing (Kathleen Willis, Steve Quinn, Lori Clark and Leonard Golder) voted **MODIFY** the Decision and Certificate of Action of the Wildlife Woods Definitive Subdivision, Planned Conservation Development Special Permit and Water Resource Protection Special Permit, dated March 6, 1998. Board Member Ernest Dodd did not take part in discussions relative to this decision, as he is an abutter to the property.

4. Exhibits

Submitted for the Board's deliberation were the following exhibits:

1. Planning Board Decision and Certification of Action, dated March 6, 1998
2. Letter from Parker Environmental Corporation, dated October 22, 2007, re: Fall 2007 groundwater monitoring
3. Wildlife Woods Declaration of Trail Easement, recorded at the Middlesex Registry of Deeds Book 31831, Page 288

4. Wildlife Woods Homeowners Association Trust, recorded at the Middlesex Registry of Deeds – Book 31831, Page 290
5. Letter to property owner from Bentley Building Corp., dated March 1, 2009 re: Common Land Fund
6. Letter, dated May 28, 2009 from the Stow Recreation Commission with Plan of Wildlife Woods Subdivision Open Parcels identifying parcels of interest to the Recreation Commission
7. Email, dated June 1, 2009 from the Board of Health
8. Email, dated June 16, 2009 from the Recreation Commission
9. Email, dated June 18, 2009 from the Recreation Commission
10. Letter, dated July 1, 2009 from Lew Halprin – proposed Life Course
11. Letter, dated July 24, 2009, to Board of Selectmen from Shirley Rossetti, 89 Kingland Road
12. Letter, dated July 24, 2009, to Conservation Commission from Shirley Rossetti, 89 Kingland Road
13. Letter, dated July 28, 2009 from Town Counsel
14. Email, dated July 28, 2009 from Conservation Commission
15. Letter, dated September 22, 2009 from Bentley Building Corp.

5. FINDINGS, CONCLUSIONS and CONDITIONS

Based upon its review of the Exhibits and the record of the proceedings, the Board finds and concludes the following:

- 5.1 **Finding** – This Decision is in response to a notice of interest in Open Land Parcels A4, A2 and A3 of the Wildlife Woods Definitive Subdivision/Planned Conservation Development Plan entitled Wildlife Woods from the Town of Stow Recreation Commission.
- 5.2 **Finding** – Open Land parcels 2A-1A, 2A-2A, 2A-3A, 2A-4A, 2A-4A, 2A-B, 2A-C, 2A-D, 2A-3, and 2A-F were transferred to the Town at the May 2008 Annual Town Meeting.
- 5.3 **Finding** - In a letter, dated May 28, 2009, the Recreation Commission advised the Planning Board of its interest in Open Land Parcels A4, A2 and A3 of the Wildlife Woods Definitive Subdivision/Planned Conservation Development Plan entitled Wildlife Woods.
- 5.4 **Finding** – On June 23, 2009, members of the Recreation Commission met with the Board and stated their interest in Open Land Parcels A4, A2 and 3 is to have two contiguous parcels (Pine Bluffs Recreation Area and Wildlife Woods Open Land Parcels) in order to create access to Town owned land for foot traffic, a canoe and kayak launching area on an adjacent Conservation Commission parcel, and a small parking area.
- 5.5 **Finding** - On June 26, 2009, members of the Planning Board conducted a site walk with the members of the Recreation Commission to view parcels A2, A3 and A4 to their proximity to the homes in Wildlife Woods as well as their relationship to other Town owned land, including land that is under the care and custody of the Stow Conservation Commission.

- 5.6 **Finding** – The Board finds that access to the Conservation Commission Parcel, proposed to be used to launch canoes and kayaks, is available from Kingland Road.
- 5.7 **Finding** – The Board finds that access to the Wildlife Woods Open Land Parcels is available from an existing pathway from the Pine Bluffs Recreation Area to Kingland Road.
- 5.8 **Finding** – Several residents of Wildlife Woods Subdivision voiced objections to a change in use of the Open Land Parcels, stating that it was their understanding that use of the Open Land was to be limited to the existing walking trails and a 2-acre Recreation Easement for a neighborhood playground.
- 5.9 **Finding** – Section 8.5.9.1 of the Zoning Bylaw states:
- “The proposed use of the Open Land shall be specified on a Land Use Plan and appropriate dedications and restrictions shall be part of the deed to the Open Land. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the Open Land in order to enhance the specific purposes of Planned Conservation Development.”
- 5.10 **Finding** – The Subdivision Plan, as approved by the Board shows an open land trail system and a 2-acre Dedicated Recreation Area Easement on Parcel F. In its Original Decision, the Board found:
- “The open land trail systems shown on the Plan are the result of collaborative efforts between the Applicant, the Board, and neighbors. It provides a trail network and 70+ acres of open land, which exceeds the 60% requirement for a PCD/Subdivision.”
- The Subdivision Plan, as approved shows a trail network for which public access easements were granted to the Town and a 2-acre Dedicated Recreation Area Easement on Parcel F.
- 5.11 **Finding** – A Declaration of Trail Easement, recorded at the Middlesex Registry of Deeds (Book 31831, Page 288), was granted to the Town of Stow.
- 5.12 **Finding** – Article II of the Wildlife Wood Homeowners Association Trust document, recorded in the Middlesex Registry of Deeds (Book 31831, Page 290n) states:
- “The Declarant has covenanted with the Planning Board of the Town of Stow that the land which is the subject of this Trust shall be designated as Open Space for the equal use and enjoyment of each resident of the Subdivision represented in said Subdivision Plan and that it will remain permanently not occupied by any structure, nor by any use that would change its natural state, excepting structures required to serve utility needs of the beneficiaries of this Trust. The Trustee(s) of this Trust, in discharging its responsibilities hereunder, shall honor this covenant and enforce restrictions imposed thereby, but shall not be obligated to develop said Open Space except such improvements which may be directed by the lot owners and assessed as common expenses, as provided in Sec. 5.4 hereunder.”
- 5.13 **Finding** – Section 8.5.1.10 of the Zoning Bylaw states:
- In all cases, a perpetual restriction approved by the Planning Board and enforceable by the Town of Stow shall be imposed on the use of such land, providing in substance that the land be kept in its natural state and that the land shall not be built upon or developed or used except in accordance with the provisions of PCD as set forth herein and, if

applicable, as further specified in the decision of the Planning Board governing the individual PCD.

Finding – A draft Conservation Restriction was submitted with the Original Application.

Finding – The Original Decision included the following finding:

“The Applicant stated that the open land will be placed in the ownership of a Homeowners Trust. The Homeowners Trust will offer a deed of the open land to the Town of Stow or its designee. In the event that the Town of Stow, or its designee, does not accept all or any portion of the land, any portion not accepted shall remain in the ownership of the Homeowners Trust. The Applicant also stated that any open land remaining in the Trust will be placed under a permanent conservation restriction as allowed by the provisions of Mass. General Laws, Chapter 184, Sections 31 and 32 subject to underlying easements and uses as shown on the Plan.”

Finding – The Board finds that the above referenced finding is inconsistent with the requirements of 8.5.1.10.1 of the Zoning Bylaw, which states:

“In all cases, a perpetual restriction approved by the Planning Board and enforceable by the Town of Stow shall be imposed on the use of such land, providing in substance that the land be kept in its natural state and that the land shall not be built upon or developed or used except in accordance with the provisions of PCD as set forth herein and, if applicable, as further specified in the decision of the Planning Board governing the individual PCD.”

Condition – A perpetual restriction approved by the Planning Board and enforceable by the Town of Stow shall be imposed on the use of such land, providing in substance that the land be kept in its natural state and that the land shall not be built upon or developed or used except in accordance with the provisions of Section 8.5 (PCD) of the Zoning Bylaw and, as further specified in the Original Decision, as modified herein.

5.14 **Finding** – In a letter, dated September 22, 2009, Mark White of Bentley Building Corporation, Developer of the Wildlife Woods Subdivision, stated in part:

“It has recently come to our attention that certain interests in the Town may be considering active recreational uses on certain of the Open Space Parcels. This potential use is, in my opinion, not in keeping with the spirit, if not the exact letter, of the Board’s Decision and Certificate and contrary to what we have understood, and thus communicated to homebuyers at Wildlife Woods, to be the possible long-term use of the Open Space Parcels.”

“As the actual developer for Wildlife Woods, we have always been of the understanding that whatever entity owned the fee in the Open Space Parcels they would be predominantly and permanently retained in their natural state. We have, in good faith so advised homeowners who purchased in Wildlife Woods.”

5.15 **Finding** – The Open Land parcels are subject to the provisions of the Grant of a Title 5 Nitrogen Loading Restriction and Easement. The Grant prohibits any activities, including but not limited to nitrogen fertilizers and the introduction of artificial impervious surfaces, on the Parcels that would have a detrimental effect on nitrogen loading on the credit land.

Finding – The Town of Stow Health Agent, John P. Wallace, advised that the Nitrogen Loading Restriction and Easement restricts the allowable use to passive recreation.

5.16 Finding – In a letter dated July 28, 2009, Town Counsel advised:

"The Town has fee title to each of the open space parcels found within the "Wildlife Woods" Subdivision as approved by the Planning Board in 1998. This title is unrestricted by deed or Town Meeting and Board of Selectmen vote. However, the Planning Board approved and endorsed a plan of land for the "Wildlife Woods" subdivision containing language that could reasonably be interpreted to protect the open space parcels from development or substantive disturbance, suggesting that the open space parcels were intended to be used for conservation" purposes only. Moreover, while the Planning Board *could* have specified in its decision its intentions with regard to the use of the open space parcels as provided for in Section 8.6.4.2, it chose not to, suggesting that Section 8.6.4.2's directive that the "...land be kept in its natural state." is controlling. (Emphasis supplied).

Given the inconsistencies found within the Board's 1998 decision and after a review of the Board's decision and the Zoning Bylaw upon which the Board's decision was based, it is my opinion that absent a modification of the Board's 1998 decision, the open space parcels as shown on the "Wildlife Woods" definitive plan and the subject of the Planning Board's 1998 decision cannot be used in a manner inconsistent with Section 8.6.4.2 of the Zoning Bylaw, that is, the land must be "kept in its natural state" and "not built upon or developed".

Town Counsel further noted that the Planning Board has the authority pursuant to G.L. c.40A, s.9 and G.L. c.41, s.8I-U and 81-W, as well as the Stow Zoning Bylaw (Sections 8.5 and 9.2) to amend the special permit issued for the "Wildlife Woods" subdivision to clarify the Board's intentions with regard to allowable uses of the open space parcels, provided that in no case may the Board allow uses of the open space parcels inconsistent with Section 8.5.9 of the Zoning Bylaw.

5.17 Finding – During the Public Hearing, residents of the Wildlife Woods Subdivision voiced concern that the Open Land Parcels were conveyed to the Town without notice to the residents.

Finding – Notice of intent to convey the Open Land Parcels was given to residents of the Wildlife Woods Subdivision, by letter from Bentley Building Corporation, dated March 1, 2009 Re: Common land Fund – Wildlife Woods Development to the Wildlife Woods property owners.

Finding – Notice of the intent to convey the Open Land Parcels was made by the Town by inclusion on the Town Meeting Warrant.

5.18 Finding – During the Public Hearing, residents of the Wildlife Woods Subdivision indicated their intent to approach the Board of Selectmen to convey the Open Land Parcels back to the Homeowners Association. Board members indicated they would support such a request.

5.19 Finding – During the Public Hearing, residents of the Wildlife Woods Subdivision advised that they do not have an active Homeowners Association.

5.20 Finding – Based upon its review of the Original Decision, the Zoning Bylaw and the record of proceedings, the Board finds that the intent of the Planned Conservation Development Bylaw and the Original Decision is that reference to "recreation" for the Open Land is intended to be "passive recreation", meaning: Activities, which are non-motorized, non-commercial, non-competitive, and require little or no modification to the natural landscape.

Condition – The Open Land Parcels shall be limited to the uses as defined on the Plan as approved by the Board.

Finding – Section 8.5.12 states:

“Any change in the layout of streets; in the configuration of the Open Land; in the ownership or use of the Open Land; or any other change which, in the opinion of the Planning Board, would significantly alter the character of the PCD, shall require the written approval of the Planning Board. The Planning Board may, upon its own determination, require a new Special Permit and hold a public hearing pursuant to the requirements of this bylaw if it finds that the proposed changes are substantial in nature and of public concern.”

Condition – Any modification to the present use of the Open Land Parcels shall be subject to Planning Board approval.

- 5.21 **Finding** - In a letter, dated July 1, 2009, Lew Halprin proposed a Life Course to be located on the Pine Bluffs Recreation Land and the Wildlife Woods Open Land Parcels.

The Board has insufficient details as to the final layout and use to determine if the proposed Life Course is appropriate for the Site.

- 5.22 **Finding** – Section 9.12 of the original Decision requires:

“The Homeowners Association shall be responsible for application of all fertilizers, herbicides, pesticides and other such chemicals. A fertilizer application plan shall include a goal to reduce topical application of pesticides and herbicides to 25% of the design amounts noted in the Mass. Balance calculations used in reports by Geologic Survey Corporation. A Plan shall be submitted to the Board for approval prior to application of any pesticides or herbicides.”

Condition – The Homeowners Association shall submit a fertilizer application plan, as required by Section 9.12 of the Original Decision, to the board for approval prior to application of any pesticides or herbicides.

- 5.23 **Finding** – Section 9.14 of the Original Decision requires:

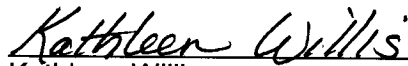
“A monitoring well program shall be established for the areas of the projected highest nitrate concentration, as shown on the Plan and reports prepared by GSC and reviewed by D'Amore Associates. Monitoring Well MW7 and two additional wells to be installed at a location and depth as directed by the Town through its Hydrogeologic Consultant, shall be sampled to detect potential on or off-site degradation of drinking water. Each well sampling shall include nitrate, sulfate, sodium, chloride, phosphorous, MBAS (a surfactant) and chlorine. Sampling shall be performed on or about October 1 on an annual basis. If the water quality analysis indicates a trend toward degradation, then the monitoring program shall be amended to detect any seasonal trend in the data or the need to evaluate additional mitigative measures. The results of the analysis shall be submitted to the Board of Health and the Board. The Homeowners Association shall be responsible for costs associated with on-going monitoring and any remediation deemed necessary by the Board. If the Homeowners Association fails to perform the required testing, testing will be done at the direction of the Town and the Homeowners Association shall reimburse costs (including collection costs) to the Town.”

Finding – Results of the analysis were submitted to the Board of Health on an annual basis through October of 2007. No monitoring has been conducted since October of 2007.

Condition – The Homeowners Association shall be responsible to continue annual well monitoring program as required by Section 9.14 of the Original Decision.

- 5.24 **Finding** - This Site Plan Approval Decision Modification No. 1 shall be considered a condition of, and an amendment and modification to all prior site plan approvals and amendments for the purposes stated herein. Except as expressly modified by this Decision Modification No. 1, all terms and conditions of the Original Site Plan Approval Decision shall remain in full force and effect.

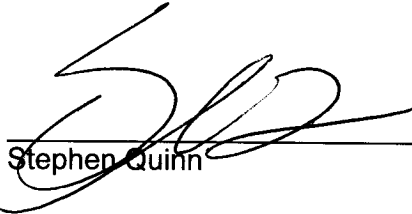
Witness our hands this 20th day of October 2009



Kathleen Willis



Leonard Golder



Stephen Quinn

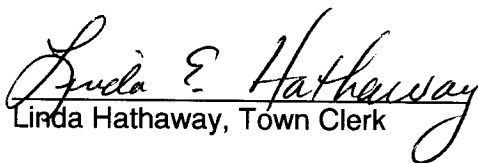


Lori Clark

Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, s. 17, and MGL, Ch. 41, s. 81-BB, and shall be filed within 20 days after the date of filing this Decision with the Town Clerk.

Received and Filed
Volume II, Page 465



Linda Hathaway, Town Clerk

October 28, 2009
Date